

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT HARRISON and TIFFANY
HARRISON,

Plaintiffs,

V.

CALIBER HOME LOANS, INC., et al.,

Defendants.

CASE NO. C16-5171 BHS

**ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS AND GRANTING
PLAINTIFFS LEAVE TO AMEND**

This matter comes before the Court on Defendants Quality Loan Service

Corporation of Washington (“Quality Loan”), Caliber Home Loans, Inc. (“Caliber Home”), and U.S. Bank Trust, N.A., as Trustee for LSF9 Master Insurance Trust’s (“U.S. Bank”) (collectively, “Defendants”) motions to dismiss (Dkts. 15, 17).

On February 17, 2016, Plaintiffs Robert and Tiffany Harrison (“Harrisons”) filed a complaint against Defendants in Pierce County Superior Court. Dkt. 1, Ex. 3. The Harrisons appeared to assert claims for violations of Washington’s Deed of Trust Act (“DTA”), violations of the Real Estate Settlement Procedures Act (“RESPA”), violations

1 of Washington's Consumer Protection Act ("CPA"), and breach of contract. *See id.* On
2 March 3, 2016, Defendants removed the matter to this Court. Dkt. 1.

3 On March 8, 2016, Caliber Home and U.S. Bank moved to dismiss the Harrisons'
4 CPA and breach of contract claims. Dkt. 8. On April 14, 2016, Court granted the motion
5 with leave to amend. Dkt. 12.

6 The Harrisons filed an amended complaint on April 22, 2016. Dkt. 14. Although
7 not entirely clear, the Harrisons appear to assert claims for violations of RESPA,
8 violations of the DTA, and breach of contract. *See id.*

9 On May 12, 2016, Quality Loan moved to dismiss the Harrisons' amended
10 complaint under Federal Rule of Civil Procedure 12(b)(6). Dkt. 15. On May 19, 2016,
11 Caliber Home and U.S. Bank also moved to dismiss. Dkt. 17. The Harrisons did not
12 respond to either motion.

13 "[I]f a party fails to file papers in opposition to a motion, such failure may be
14 considered by the court as an admission that the motion has merit." Local Rules, W.D.
15 Wash. LCR 7(b)(2). The Court considers the Harrisons' failure to respond to either
16 motion to dismiss as an admission that both motions have merit. After reviewing the
17 motions and amended complaint, the Court concludes that the Harrisons have failed to
18 state a claim for relief against Defendants. Defendants' motions to dismiss are therefore
19 granted.

20 With regard to whether dismissal will be with prejudice, the Court declines to
21 grant such relief at this time. While the Court recognizes that the Harrisons have failed to
22 respond, the Ninth Circuit has repeatedly held that "a district court should grant leave to

1 amend even if no request to amend the pleading was made, unless it determines that the
2 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*,
3 203 F.3d 1122, 1127 (9th Cir. 2000). Therefore, the Harrisons are granted leave to
4 amend their complaint. The Harrisons shall file an amended complaint no later than July
5 15, 2016. Failure to file an amended complaint will result in dismissal with prejudice
6 without further order of the Court.

7 **IT IS SO ORDERED.**

8 Dated this 5th day of July, 2016.

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11 BENJAMIN H. SETTLE
12 United States District Judge
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